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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-264
	)	
Horizontal and Vertical Ownership Limits	)	

To: The Commission

COMMENTS OF E! ENTERTAINMENT TELEVISION, INC.

E! Entertainment Television, Inc. ("E!"), by its attorneys, hereby offers its comments with respect to the channel occupancy limits proposed in the Commission's Further Notice of Proposed Rule Making ("Further Notice") in the above-captioned proceeding.

E! participated in earlier phases of this proceeding, as it has in many other Commission rule makings implementing provisions of the 1992 Cable Act,[1] to express concern over the impact of proposed rules and policies on the ability of new and innovative programmers such as E! to obtain the financial support essential to their continued growth and development.

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[1] E! also filed Comments and a Petition for Reconsideration in MM Docket No. 92-266 (rate regulation) and comments in MM Docket No. 92-265 (program access and distribution).

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E! adds to viewer choice today in large measure because of the investment of major cable MSOs at a critical juncture in E!'s development.[2] E! is concerned that the regulations the Commission proposes to adopt in this proceeding -- when taken with other new Commission rules[3] -- will impede E!'s continued progress and preclude the launch of other new and innovative programming networks.

In the earlier phase of this proceeding, E! offered some suggestions that it believed would permit the Commission to fulfill its obligations under the statute without jeopardizing creation of new programming and program networks. E! is gratified that the Commission considers some of its suggestions -- specifically, grandfathering of

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[2] E!'s MSO investors include Time Warner Cable, Comcast Cable Communications, Inc., Cox Communications, Inc., Continental Cablevision, Inc., NewChannels Corp. and United Television Corp. HBO and Warner Communications also hold interests in the service. In all of its submissions in the FCC's Cable Act-related proceedings, E! has recounted how, at a crucial stage in its development, these companies stepped forward to provide needed financial support. As a result, E!'s subscriber base has grown, and the amount of original programming produced for the channel has expanded dramatically. E! now reaches 21,000,000 subscribers with a unique service focusing on the world of entertainment that today includes six daily hours of programming produced by E! in its own Los Angeles studio.

[3] For example, § 76.922(d)(2)(vi) denies vertically integrated cable operators using the benchmark approach the opportunity to recover increases in programming costs to the same extent as cable operators who have not invested in programming. In addition, Section 76.1001 and 76.1002 impose restrictions on the contracting and distribution practices of vertically-integrated programmers.

existing carriage in excess of channel occupancy limits and a reasonable attribution standard for new programming services -- as viable regulatory concepts.

These comments recommend some specifics on the matter of attribution and respond to the Commission's request for further input on the percentage of channel capacity subject to the occupancy limit as well as various proposed exceptions to the limit.

I. Channel Capacity Subject to Occupancy Limits

For systems with limited channel capacity, the 40% occupancy limit the Commission currently has proposed is unreasonable, especially because other provisions of the Act and the Commission's rules such as must-carry, PEG access and leased access[4] already set aside a significant number of channels for program services in which the cable operator has no ownership interest.

For systems with larger capacity, there should be no restriction on the ownership of programming services occupying channels above 54. Indeed, the more channels that are available, the less need there is to set channels aside;

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[4] Must-Carry Report and Order, 8 FCC Rcd 2965 (1992) (adding 47 C.F.R. § 76.56, "Signal Carriage Obligations"); 47 U.S.C. § 531 (cable channels for public, educational, or governmental use); id. at § 532 (cable channels for commercial use).

the incentive will be to find the most attractive programming available to fill the channels, regardless of ownership.

II. Attribution Standard

E! supports reliance on the ownership attribution standard currently in use for broadcasting as an appropriate test for application of the channel occupancy limits for established programming services. In order to insure that the rules serve their intended statutory purpose, the Commission need not focus on investment; clearly control is a more important issue. The current attribution standards applied for broadcasting focus on control. Thus, the Commission should pattern ownership attribution for purposes of the channel occupancy limits after the broadcast standards and should incorporate both a single majority shareholder policy and exemptions for non-voting shareholders and insulated limited partners.

For start-up services, however, even application of the broadcast attribution standards may cut off programmers' access to the only funding that may be available to them during the precarious period prior to attainment of financial viability. Accordingly, the Commission should provide a higher threshold for ownership attribution during the first 10 years after launch of a new programming service. Specifically, a cable company should be permitted to hold <u>any</u>

non-controlling percentage of a company's voting stock or non-insulated partnership interests during this period.

III. Policy Regarding Originality and Diversity

E! supports the Commission's proposal to exempt from the channel occupancy limits programming owned by or targeted toward minority groups. If adopted, such a policy surely will enhance the overall diversity of television programming.

In addition, E! once again urges the Commission to incorporate an incentive for original program production into its rules. This can be done by raising the attribution threshold in programming services that produce their own original programming. Because program fare that is created especially and uniquely for a particular cable network will not duplicate programming available on other channels, it necessarily will enhance diversity. By the same token, the high cost of original programming requires a higher level of investment and, correspondingly, a larger universe of potential investors.

The history of cable programming demonstrates that the vast majority of the new generation of networks were made possible by the investment and underwriting efforts of cable MSOs more than by any other source. Thus, the rules should allow a higher level of cable investment -- a non-controlling share of voting stock or non-insulated partnership interests-

- for cable services that produce their own original daily programming.

IV. Waiver Policy

Finally, the Commission should establish a waiver policy to cover situations when non-cable sources of funding are not readily available. In the context of an individual waiver, the Commission can weigh the public benefit of preserving or encouraging a particular programmer through higher levels of cable funding against the impact, if any, of use of another channel or channels on a particular system for commonly-owned program fare.

V. Conclusion

In its Further Notice, the Commission has taken the initial steps toward implementing rules that will continue to encourage innovation and diversity in television programming. E! has outlined several additional steps the Commission should take to insure that its new rules do not extinguish the creativity and entrepreneurial spirit that have contributed to the wealth of program options that have come into existence in recent years.

Respectfully submitted,

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